

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1438 of 1984

to

FIRST APPEAL No 1445 of 1984

with

FIRST APPEAL No 366 of 1984

to

FIRST APPEAL No 368 of 1984

with

FIRST APPEAL No 1373 of 1985

to

FIRST APPEAL No 1378 of 1985

with

SPECIAL CIVIL APPLICATIONS Nos 29, 30 and 3869 of 1985

with

SPECIAL CIVIL APPLICATION No 32 of 1985

to

SPECIAL CIVIL APPLICATION No 43 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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BHANABHAI J VASAVA

Versus

EXECUTIVE ENGINEER  
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Appearance:

MR YV SHAH and MR VJ DESAI for appellants,  
petitioners

MS HARSHA DEVYANI for Respondent-State

MR PV NANAVATI for Respondent-Insurance Company  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/12/97

#### ORAL JUDGEMENT

1. This group of first appeals and special civil applications arise out of the same motor vehicle accident which took place on 2nd April, 1981. In the motor vehicle accident some of the labourers who were there in the truck-dumper bearing No.GTK-2527 have expired and some of them sustained injuries. In the case of death, the dependents of the persons who died and in the case of injury, the claimants filed the claim petition before the Motor Accident Claims Tribunal (Main), Bharuch District at Bharuch. In all there were 79 claim petitions. All these claim petitions were clubbed together and decided under the common judgment given on 28th February, 1983 by the Motor Accident Claims Tribunal (Main) Bharuch District at Bharuch. Dissatisfied with the aforesaid judgment of the Motor Accident Claims Tribunal (Main), Bharuch, the dependents or the claimants as the case may be, filed these first appeals or the special civil applications for enhancement of the claim.

2. The learned counsel for the appellants in the first appeals and the petitioners in the special civil applications have made the grievance only to that part of the common judgment of the learned Tribunal where 50% of the awarded amount of compensation in these matters was ordered to be deducted as the labourers who died or the labourers who sustained injuries were held to be contributory negligent to the extent of 50%.

3. The learned counsel for the appellants in the first appeals and the petitioners in the special civil applications have restricted their arguments only to the extent of 50% of the awarded amount which has been deducted by the learned Tribunal. In view of this fact, the detailed facts regarding the claim of the appellants in the set of first appeals and the petitioners in the set of special civil applications need not to be given. However, the facts to the extent to appreciate the controversy which has been raised in the first appeals and the special civil applications are to be taken briefly.

4. The truck-dumper bearing No. GTR 2527 admittedly belonged to the respondent No.1, the Executive Engineer, P.W.D. Narmada Project Division, Bharuch i.e. to the State of Gujarat. That truck-dumper admittedly was insured with the respondent No.2, United India Fire and General Insurance Co. Surat. The respondent No.3 was driver who was driving the aforesaid truck on that fateful day. Under the agreement between the respondent No.1 on one hand and the respondent No.4 (hereinafter referred to as the Contractor) on the other hand, this truck was given by the respondent No.1 to the respondent No.4 for its work of construction of the road. The said truck-dumper was also used for bringing the labourers for work of the construction from village Uchedia. On the date of the accident, 80 to 90 persons were made to sit in the said truck dumper and that vehicle started to go to the place of work of construction. On the way, another vehicle used for the work for the said construction of the road was found lying by the side of that road as there was mechanical defect therein. So the driver of the truck dumper bearing No.GTK-2527 got down and the respondent No.3 sat in the concerned truck dumper and started driving. After it travelled some distance, the said truck-dumper fell down on the side of the road. The grievance of the claimants in the claim petitions were that the respondent No.3 at the relevant time was driving the truck-dumper with excessive speed and without taking appropriate care in driving of the said vehicle. As a result of this accident, some eight persons died, nine persons serious injuries and rest received minor or semiserious injuries.

5. The learned Tribunal has framed as many as five issues in the claim cases, which reads as under:

(1) Whether the appellant proves that the death of the deceased Savitaben, widow of Bhana Jaga was

caused due to the rash and negligent driving by the driver the opponent No.3 Popaji Sartanji Thakore of the vehicle Dumper GTK 2527 involved in the accident ?

(2A) Whether the injured or deceased was guilty of contributory negligence ?

(2B) Whether the Insurance company is not liable for the compensation under a statutory provision or under the terms and conditions of the Policy ?

(2) Whether the applicant is entitled to get compensation ? If yes, what amount and from whom?

(3) What order and award ?

6. After taking the evidence of the parties, the learned Tribunal has decided Issue No.1 in favour of the claimants and it has been held that the death of the deceased workmen labourers was caused due to the rash and negligent driving of the respondent No.3 to the extent of 50% only. Under issue No.2A, the learned Tribunal held that the injured or the deceased were guilty of contributory negligence to the extent of 50%. Under issue No.2B, the learned Tribunal held that the Insurance company is liable to pay the compensation to the dependents and the injured. The claimants were held to be entitled for the compensation to the extent of 50% of the claim accepted. The respondents State or the insurance company or the driver or the contractor have not challenged the common judgment of the Motor Accident Claims Tribunal. So that judgment has attained the finality to the extent of these persons.

7. Under para-7 of the common judgment, the learned Tribunal dealt with the question of contributory negligence of the labourers. The victims and the injured were found to be contributory negligent to the extent of 50% by recording the reasons by the Tribunal namely, (i) that the victims, a few of whom are dead and majority of them are injured had preferred to sit in the said truck dumper eventhough it was overcrowded. (ii) It has been admitted by some of the witnesses examined in the matter that some of the labourers were sitting and the others were standing as there was no space for all of them to sit. From this fact, the learned Tribunal has drawn the inference that the truck was so much overcrowded that there was no space available for each and everybody of

them to sit but some of them were sitting and some of them were standing. (iii) when the dumper truck was overcrowded with so many persons it was the duty of the labourers to have refused to go by such a dumper truck as anything might happen and actually it so happened which costed the lives of the seven to eight persons and injuries to so many persons like seventy or more. So from this fact, a conclusion has been drawn that the labourers were guilty of contributory negligence. The Tribunal has further observed that in case some reasonable number of persons were carried in the dumper truck probably, the incident would not have taken place but because of heavy rush and heavy weight in the dumper truck probably it turtled down as it was bent to some extent and because of the weight and momentum, it fell down. However, the Tribunal has noticed another important fact that if the driver had refused to carry all being so many and making the truck overloaded, the accident could have been avoided. On the basis of these findings, the learned Tribunal reached to the conclusion that on either side, it can be said that there was equal proportion of rashness and/or negligence and if any one of the parties had taken some care to avoid carrying or sitting in the said truck in large number, the incident could have been averted.

8. The learned counsel for the appellants in the set of first appeals and the petitioners in the set of special civil applications contended that this approach of the Tribunal is wholly arbitrary and perverse. It is a wholly unreasonable and impracticable approach to this situation by the learned Tribunal to expect care as well as caution to be taken by the labourers who are illiterate and low paid employees. Carrying this contention further, the counsel for the appellants and the petitioners contended that the State of Gujarat and its functionaries have also not taken any note of the fact that these poor persons were taken in the dumper truck in the fashion and manner as if they were chattels. The driver should have taken all the care not to permit any labourer to be travelled to the site in the dumper truck. It is wholly negligence of the driver and this class of persons could not have been held to be negligent and rash to the extent of 50%.

9. On the other hand, the counsel for the respondent contended that it is a finding of fact which has been recorded by the learned Tribunal on which this Court may not interfere. In the matter of what proportion the parties are negligent, it is a matter wholly for the consideration of the learned Tribunal and this Court

either under the appeal or under Article 227 of the Constitution may not interfere. The counsel for the insurance company further contended that the dumper truck could not have been used for carrying of the labourers and it is clearly prohibited. In the dumper truck, the labourers to the extent of number as permissible under the permit could have been taken. So carrying of the excess number of the labourers in the dumper truck is clearly violative of the terms of permit and as such no liability of the amount of compensation could have been fastened on the insurance company. It has next been contended that the interest has been awarded by the learned Tribunal at the rate of 6% and it may not be enhanced. However, the counsel for the insurance company very fairly submitted that if this Court ultimately inclinds to increase the rate of interest awarded then only on enhanced compensation, higher rate of interest may be awarded.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

11. I find sufficient merits in the contention raised by the learned counsel for the appellants in the set of first appeals and the petitioners in the set of special civil applications that the Tribunal has wholly acted arbitrarily in holding that the victims or the injured were liable for contributory negligence to the extent of 50% in the accident. Whole blame has been put by the learned Tribunal on the labourers but the Tribunal has altogether ignored while holding these persons to be negligent to the extent of 50%, an important aspect that these are the illiterate persons and they are being dealt with by the contractors and even by the State Government as chattels. It is clearly borne out from the fact that this dumper truck was used by the contractor for the purpose of carrying of the labourers to the site. So the labourers were provided this facility by the contractor who has undertaken the work of the respondent-State Government to which this truck dumper belonged for its own benefits and gains. He used to take the labourers at the site within short time. Otherwise also these are the illiterate persons and it is difficult to expect from them of all these niceties of duties and obligations and the knowledge of law. These are the persons who are using this dumper truck to go to the site only to avoid the travelling by foot. It was a continuous process and at no point of time either the State Government or its Officers or the Contractor and even the driver has objected to it. On the other hand, it has been encouraged and these poor persons were given an

impression as if they have been given this facility for going to the site for the Government work to be carried out through the Contractor. The learned Tribunal has found as a fact that it is a clear case of rashness and/or negligence of the driver which resulted in this accident. The learned Tribunal further held that the driver of the vehicle ought to have refused to carry so many persons on the body of the dumper truck.

12. Another finding has been recorded that the act of the driver to have started driving the vehicle from the place where the regular driver who had actually gone to fetch the labourers got down for repairing the other vehicle and to have driven the same with so much load in the body of the dumper, is an important factor of rashness and/or negligence. The learned Tribunal has further found that there is no much challenge to the fact that the driver of the vehicle was rash and/or negligent in driving as a result of which the incident took place.

13. In the presence of these findings, I fail to see any justification in the approach of the learned Tribunal to hold these persons to be contributory negligent to the extent of 50% in the accident. It is the duty of the driver to see that the only permissible number of labourers and the weight to the extent permissible could have been carried in the dumper truck. So in these facts, I am of the considered opinion that the approach of the Tribunal to hold these persons to be contributory liable to the extent of 50% in the accident is wholly perverse.

14. In the result, all these first appeals and the special civil applications are allowed. The finding of the learned Tribunal to the extent where it has held that the appellants in the first appeals and the petitioners in the special civil applications to be guilty of contributory negligence to the extent of 50% in the accident is reversed. The accident has been caused wholly and solely because of the rash and negligent driving of the driver of the dumper truck and as such deduction of 50% of the amount of compensation for which these appellants in the first appeals and the petitioners in the special civil applications were found liable is quashed and set aside. The judgment given by the Motor Accident Claims Tribunal (Main) Bharuch district at Bharuch in the Motor Accident Claims Appeals out of which these first appeals and the special civil applications have arisen is modified to the aforesaid extent and the claimants are entitled to the full amount of compensation as it has been found payable to them by the respondent.

15. The next question which calls for consideration of this Court is at what rate the interest on amount of compensation has to be awarded. The learned Tribunal has awarded the interest on compensation to claimants at the rate of 6% p.a. and the learned counsel for the appellants in the first appeals and the petitioners in the special civil applications has not made any contention to that part of the award of the learned Tribunal. In view of this fact, I do not consider it to be a fit case where interest as awarded by the Tribunal should be modified. However, on the enhanced amount of compensation, the appellants and the petitioners, as the case may be, shall be entitled for 6% interest from the date of filing of the applications for compensation and 12% from the date of the award till the date of payment thereof. The respondents are directed to deposit the enhanced amount together with the interest thereon to be calculated at the rate as aforesaid for the period from the date of the applications till the date of the award and from the date of the award till the date of the payment thereon within a period of three months from the date of receipt of certified copy of this order. The first appeals and special civil applications are allowed and rule is made absolute in the special civil applications with no order as to costs.

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